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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,261	11/17/2005	Uwe Lehmann	P&P-100	9287
23557 7590 03/09/2009 SALIWANCHIK LLOYD & SALIWANCHIK A PROFESSIONAL ASSOCIATION PO Box 142950 GAINESVILLE, FL 32614				
EXAMINER				
SASAKI, SHOGO				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
03/09/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/539,261

**Applicant(s)**

LEHMANN ET AL.

**Examiner**

Shogo Sasaki

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/16/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 10/2/06, 12/21/07
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Inventor's Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) filed on 12/21/2007 fails to comply with 37 CFR 1.98(a)(3) because it does not include concise explanations of the relevance for some of the non-patent literature cited therein, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information. The reference numbers R3, R6 and R10 included in the IDS filed on 12/21/2007 are not in the English language, however they do not include concise explanations of the relevance. The IDS have been placed in the application file, but the abovementioned information referred to therein has not been considered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The specification does not describe the claimed limitation "mean diameter." It is not clear if the "mean diameter of the channel" is the diameter defined by a cross-sectional area of a channel/conduit having a circular conduit cross-section; or it is the diameter defined by a channel/conduit formed into a round shape. Therefore it is not clear what is greater than the "path."

Also, applicant defines the turning point as "a point at which the curved direction of the channel and therefore also the flow direction of the fluid stream flowing through the channel changes to the particular other direction." (page 4, lines 8-12). The curved

path will inherently have infinite numbers of turning points at corresponding numbers infinitesimal curvatures. The direction of the path on a tuning point changes at all times. Applicant defines the curve as "any curved region of the channel having the same curve direction, and such a curve lies between two directly sequential turning points, which mark a change to the particular other direction." (page 4, lines 14-18). The direction of the path along the curve changes at all times.

The turning points; the curve; and the relationships between the two depicted in the figures appears to be different from how they are defined in the specification. The reference characters 7, 7a, 8 and 8a in Fig. 2-4 appear to be at the linear path defined by two joined round paths. It is unclear what path between which tuning points is considered a curve. In light of above assumed definitions of the mean diameter:

(1) It is unclear how a mean/average diameter of a conduit could be greater the length defined by the path between two turning points; and

(2) It is unclear how a mean/average diameter defined by a channel/conduit formed into a round shape could be greater the length defined by the path between two turning points. The mean diameter of a material having a volume/thickness formed into a round shape is defined by an average of the diameters defined by the inner and outer circumferential outlines. Examiner fails to see how this diameter could be greater than the path, which corresponds to the circumference correlated to said diameter.

Therefore the limitations "the path between two turning points" in claims 1 and 11 is unclear; and "the mean diameter of the channel is greater than the path between two turning points" is unclear. Appropriate correction/clarification to the claims is requested. Without a persuasive clarification or amendments to said claims, said claims will be rejected under 112(2) on the basis of indefiniteness. Appropriate correction/clarification to the specification is requested. Without a persuasive clarification or amendments to the specification, the specification will be objected.

Please also consider the second paragraph of Box VIII in PCT/IPEA/409.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-18 are rejected under 35 U.S.C. 102(a) and (b) as being anticipated by Lehmann et al. (IDS: Sensor 2003 Proceedings, 157-161). It is assumed that the publication date of the reference is 1/27/2003 or 1/22/2003; or before these dates. Applicant is required to show that the publication date (and/or online availability date) is after 1/22/2003 to overcome 102(b) rejection; and show that the publication date (and/or online availability date) is after 1/27/2003 to overcome 102(a) rejection, along with the English translation for 10303107.3.

Regarding claims 1-18, Lehmann et al. disclose the devices recited in said claims (page 159-160; and Fig. 4). The column in Fig. 4 shows both configurations of leg connections, legs that are connected by linear sections and legs that are connected to one another by curves.

Note: The use of reference characters is to be considered as having no effect on the scope of the claims. MPEP 608.01(m)

6. Claims 1-18 are rejected under 35 U.S.C. 102 as being unpatentable over by the Applicant's Admission of Prior Art (Fig. 1; and page 10, line 11 - page 11, line 6.).

Regarding claims 1-18, the Applicant's Admission of Prior Art (AAPA) discloses a separating column and chromatogram which read on currently presented claims.

A statement by an applicant in the specification or made during prosecution identifying the work of another as "prior art" is an admission which can be relied upon for both anticipation and obviousness determinations, regardless of whether the admitted prior art would otherwise qualify as prior art under the statutory categories of 35 U.S.C. 102.

**Conclusion**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shogo Sasaki whose telephone number is (571)270-7071. The examiner can normally be reached on Mon-Thur, 10:00am-6:30pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SS

3/5/2009

/Brian R Gordon/

Primary Examiner, Art Unit 1797